IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2563 OF 2003

Shaheen Bazar Co-op.Stall Holders
Association & ors. .. .. Petitioners
v/s.
Bombay Municipal Corporation & ors. .. Respondents

Mr.A.A. Mirza for petitioners.
Ms.Aruna Savla for res.Nos.1 to 3.

CORAM : H.L. GOKHALE &
S.R. DONGAONKAR, JJ.

DATED : 13th March 2006

P.C. :

1. Heard Mr.Mirza in support of this Petition. Ms.Savla appears for the Municipal Corporation.

2. The Petition is seeking to challenge the legality of the Circular dated 5th June 1999 issued by the Municipal Corporation and the notices sent in that behalf calling upon the petitioners to pay the revised charges for refuse collection. Those notices are issued on 13th August 2003 onwards. The grievance of the petitioners is only about the refuse charges which are revised two times over the earlier charges. The Petition is filed by the Association of 52 hawkers who are running their business in the Bandra (West) area on the foot-path. A reply has

been filed earlier by the Municipal Corporation explaining as to what is the basis of various charges sought by the BMC for the licences and refuse collection. It was, however, pointed out by the Counsel for the petitioners that the sugarcane crushers were being given a concession. Earlier an order was passed protecting the petitioners from any coercive action. That order was passed on 15th June 2004 since the proposal regarding this refuse collection was pending approval in the General Body. On 31st January 2006, we asked the Municipal Advocate to file an affidavit placing on record what is the exact policy with respect to the sugarcane crushers and other hawkers. Ms.Savla appearing for the Municipal Corporation has shown us the relevant file of the BMC which records that the necessary proposal is not yet approved by the Standing Committee and a further period of two months is required.

3. Mr.Mirza, learned Counsel appearing for the petitioners, submits that the petitioners are doing the business with great difficulties, that they are small time hawkers and if concession is given to the sugarcane crushers who are creating larger refuse, surely the petitioners' business

otherwise should be either treated similarly or in fact with little more consideration. In our view, this is a matter of policy which the Municipal Corporation has to decide and it must decide the same rationally. The petitioners cannot be permitted to contend that they will run their business on the foot-path and at the same time will not pay the charges levied by the Municipal Corporation. They are however entitled to point out that there is discrimination, if at all and the Municipal Corporation is duty bound to consider their representation, if any. Now, Ms.Savla, learned Counsel appearing for the Municipal Corporation has pointed out that the matter is pending consideration before the Standing Committee. Mr.Mirza submits that this is going on for good time and no decision is being finalised. We, therefore, expect the Municipal Corporation to take the necessary decision within two months as stated in the Municipal file. The petitioners will however have to pay whatever charges are sought by the Municipal Corporation. The Court cannot be a party to a submission that one will conduct his business on the footpath and will not pay the charges which are sought by the Municipal Authorities. The petitioners will have to pay the charges which are sought by the BMC,

even pending this determination by the Municipal Authorities. Noting however the Minutes of the Municipal Authorities that the decision is expected within two months, we continue the order passed earlier namely that the coercive measures will not be taken for a period of two months. This is on the footing that the decision will be taken within two months. The hawkers, if they do not pay the necessary charges at the end of two months in spite of the appropriate decision the BMC will be at liberty to take the appropriate action against them.

4. Petition stands disposed of with the above order.

(H.L. GOKHALE, J.)

(S.R. DONGAONKAR, J.)